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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON

KELLI GRAY, and all other similarly
situated,

Plaintiffs,

v.

SUTTELL & ASSOCIATES, *et. al.*

Defendants.

EVA LAUBER, DANE SCOTT,
SCOTT BOOLEN, JOEL FINCH and
all other similarly situated,

Plaintiffs

v.

ENCORE CAPITOL GROUP, INC. *et.*
al.

Defendants

Case No.: CV-09-251-EFS

MEMORANDUM IN SUPPORT OF
PLAINTIFF'S MOTION TO STRIKE
PORTIONS OF THE MIDLAND
DEFENDANTS' MEMORANDUM IN
OPPOSITION TO PLAINTIFF'S
"SUPPLEMENTAL MOTION FOR
CLASS CERTIFICATION" (Ct. Rec.
245)

1 On March 1, 2011, the Encore Defendants filed a Response to Plaintiffs'
 2 Motion for Class Certification. (Ct. Rec. 245). The Defendants' brief argues the
 3 class certification is inappropriate because the claims of the putative class members
 4 in this lawsuit are part of a "nationwide settlement in *Brent*." (Ct. Rec. 245, p. 3,
 5 ln. 10-11). However, the *Brent* docket report shows no such agreement. (Ct. Rec.
 6 Ct. Rec. 254-3). The Encore Defendants did not file an affidavit, or copy of any
 7 settlement agreement in this action.
 8
 9

10 Following is a list of the objectionable portions of the Encore Defendants
 11 Response Brief:
 12

- 13 1. Ct. Rec. 245, p.1, ln. 7-11: "The Supplemental Motion is one in a
 14 series of hastily filed motions submitted by Plaintiffs in a race to
 15 have an affidavit class certified in this case before the U.S. District
 16 Court in the Northern District of Ohio approves a nationwide
 17 settlement in *Midland Funding v. Brent*."
- 18 2. Ct. Rec. 245 p.3, ln. 7-11: "Plaintiffs have made no secret of their
 19 motives here. They have hastily filed this unsupported Supplemental
 20 Memorandum in the hopes that this court will certify the Proposed
 21 Affidavit Classes in this case before Judge Katz approves the
 22 nationwide settlement agreement in *Brent*."
- 23 3. Ct. Rec. 245, p. 4, ln. 11-18: "On February 10, 2011, Midland and
 24 the plaintiffs in the *Brent* action reached an agreement-in-principle
 25 to settle the Brent plaintiffs' affidavit-based claims on a nationwide
 basis. The agreement was the culmination of extensive efforts by the
 parties and Judge Katz to reach a nationwide resolution of the
 affidavit-based claims. The settlement agreement and motion for
 preliminary approval will be filed on March 3, 2011. When they are
 filed, Midland will promptly notify this Court."

- 1 4. Ct. Rec. 245 p.6, ln. 11-14: “Once Plaintiffs’ counsel in this case
2 learned of the *Brent* settlement, he filed a slew of motions in this
3 Court, apparently aimed at curing the defects in his complaint and
4 obtaining class certification before the *Brent* settlement is filed.”

5 Hearsay is an out of court statement offered to prove the truth of the matter
6 asserted therein. ER 801(c). All statements regarding a “*Brent* nationwide
7 settlement” are hearsay, inadmissible, and should be stricken.

8 On February 16, 2011, Ms. Gallegos told the court she was not present at
9 any *Brent* settlement negotiations, was not aware of the terms of any settlement, or
10 even if there was a written agreement. Immediately following the hearing
11 Plaintiffs’ counsel called the *Brent* counsel and Midland’s counsel in *Gray* to
12 request a copy of any settlement agreement. (Ct. Rec. 254, *Decl. M. Kinkley* p. 2, ¶
13 2). The calls were not returned. On February 25, 2011, Plaintiffs’ counsel followed
14 up on the phone calls with letters requesting a copy of the settlement agreement-
15 (Ct. Rec. 254, *Decl. M. Kinkley* p. 2, ¶ 3; Ct. Rec. 254-1; Ct. Rec. 254-2). Plaintiffs
16 did not receive a response to the letters.

17 On March 7, 2011 Plaintiff’s counsel again called Mr. Munding. On March
18 8, 2011, Mr. Munding returned Plaintiffs’ counsel’s call. Mr. Munding indicated
19 he did not have a copy of any *Brent* settlement agreement, was not aware even if
20 one had been signed or not, or what the terms might be. (Ct. Rec. 254, *Decl. M.*
21 *Kinkley* p. 3, ¶ 7). There is nothing in the records to support a claim of a *Brent*

1 settlement or what it might affect this lawsuit. Ms. Gallegos (at the February 16,
 2 2011 hearing (and in the response brief) told the Court the settlement agreement
 3 was going to be filed on March 3, 2011. (Ct. Rec. 254, p. 3, ¶ 9; Ct. Rec. 245, p. 4,
 4 ln. 11-18). It was not. (Ct. Rec. 254-3).

6 The references to the alleged *Brent* settlement in the Encore Defendants
 7 Response should be stricken and not considered by the Court.
 8

9 Dated the 8th day of March, 2011.

11 *Michael D. Kinkley P.S.*

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CM/ECF CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of March, 2011, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following:

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